

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

BRIEFING DRAFT

MEETING DATE: MARCH 18, 2021

AGENDA ITEM NUMBER: 14

**SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN FORSYTH COUNTY AND THE WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION FOR USE OF COUNTY OWNED FUEL PUMPS LOCATED AT 3730 N. LIBERTY STREET (GENERAL SERVICES DEPARTMENT)**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:**

**SUMMARY OF INFORMATION:**

ATTACHMENTS:  YES  NO

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT  
BETWEEN FORSYTH COUNTY AND THE WINSTON-SALEM/FORSYTH COUNTY  
BOARD OF EDUCATION FOR USE OF COUNTY OWNED FUEL PUMPS LOCATED  
AT 3730 N. LIBERTY STREET  
(GENERAL SERVICES DEPARTMENT)**

**WHEREAS** Forsyth County is selling a 31-acre portion of County owned real property located at 4897 Lansing Drive to Front Street-Garner, LLC;

**WHEREAS** this property is currently used by the Winston-Salem/Forsyth County Board of Education (the School System) for maintenance shops, offices and vehicle parking, and additionally, this site includes one active underground storage tank which is currently used by School System staff for fueling of School System vehicles;

**WHEREAS** once the above-described property is conveyed to Front Street-Garner, LLC, the underground storage tank will no longer be owned by Forsyth County and no longer available for School System use;

**WHEREAS** the County owns and utilizes fuel pumps at the Automotive Services facility located at 3730 N. Liberty Street and sufficient capacity exists at this location to fuel additional vehicles;

**WHEREAS** the School System desires to routinely fuel approximately 200 vehicles at the County's Automotive Service facility and will reimburse the County for the fuel it uses plus an overhead charge of 2% per gallon; and

**WHEREAS** the term of the Interlocal Agreement will be from April 1, 2021, through June 30, 2026;

**NOW, THEREFORE, BE IT RESOLVED**, by the Forsyth County Board of Commissioners that the County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, an Interlocal Agreement with the Winston-Salem/Forsyth County Board of Education for use of County owned fuel pumps located at 3730 N. Liberty Street, substantially in the same form as the Interlocal Agreement attached hereto, subject to a pre-audit certificate thereon by the County Chief Financial Officer, and approval as to form and legality by the County Attorney.

**BE IT FURTHER RESOLVED** that this resolution ratifying interlocal cooperation between Forsyth County and the Winston-Salem/Forsyth County Board of Education is hereby spread upon the minutes of the Board of Commissioners of Forsyth County.

Adopted this the 18<sup>th</sup> day of March 2021.

**STATE OF NORTH CAROLINA**

**AGREEMENT**

**FORSYTH COUNTY**

THIS AGREEMENT, made and effective this 1<sup>st</sup> day of April, 2021, by and between Forsyth County, North Carolina (the "County"), and the Winston-Salem / Forsyth County Board of Education (the "School System");

For the purpose and subject to the terms and conditions hereinafter set forth, the County and the School System hereby agree as follows:

**1. Services.** The County shall allow the School System to fuel School System owned vehicles using County owned fuel pumps located at 3730 N Liberty Street, Winston-Salem, NC 27105. The School System shall have access to the fuel pumps at the above location twenty four hours a day, seven days a week. In the event that County fuel pumps become inoperable or are inaccessible to the School System, the County shall have no obligation to provide the School System with an alternate means of fueling School System vehicles. In the event that fuel is rationed or is otherwise limited, the County may, in its sole discretion, impose a limit on the number of gallons that School System employees may consume from County fuel pumps.

**2. Term.** The services of this Agreement shall begin on April 1, 2021, and, unless sooner terminated by mutual consent or as hereinafter provided, shall be provided until June 30, 2026; provided that either party shall have the right to terminate this Agreement, without cause, upon 30 days' notice in writing to the other party, or upon 7 days written notice if the other party breaches the Agreement.

**3. Compensation.** As full compensation for the County's services, the School System agrees to reimburse the County for the direct cost of its monthly fuel consumption and for the County's overhead costs. Costs shall be calculated monthly. For each month, the direct cost will equal the total gallons of fuel consumed by the School System at the County facility for the month multiplied by the County's average cost per gallon paid in that month. The overhead cost shall equal the direct cost multiplied by two percent (2%). In no event shall the annual overhead cost exceed \$7,500.

The County shall bill the School System its preceding monthly costs by the 10<sup>th</sup> of the following month. The School System shall pay all such bills within 15 days.

**4. Indemnification.** The School System agrees to indemnify, defend, and hold the County harmless from and against any and all claims, expenses (including attorney fees), costs or liability for negligent acts or omissions of the School System relating to this Agreement or services provided pursuant to it.

**5. Insurance.** The School System shall maintain, at its sole expense, insurance coverage as required by the Forsyth County Risk Manager.

**6. County Property.** School System agrees that it shall be responsible for the proper custody and care of any property furnished to it by the County for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. Any information, data, documents, studies, or reports given to or prepared or assembled by the School System under this Agreement shall be kept confidential and not divulged or made available to any individual or organization without prior written approval of the County, unless disclosure is authorized or required under State law.

**7. Notice.** All notices permitted or required to be given by one party to the other party shall be addressed and delivered in writing as follows:

For the County:  
Scott W. Angell, General Services Director  
Forsyth County Department of General Services  
201 N Chestnut Street  
Winston-Salem, NC 27101

For the School System:  
Darrell Walker, Assistant Superintendent  
Winston-Salem / Forsyth County Board of Education  
PO Box 2513  
Winston-Salem, NC 27102

**8. Assignment.** The School System may not assign its obligations under this Agreement unless it has received prior written approval from the County, which may be withheld at the sole discretion of the County.

**9. Waiver.** No action or failure to act by the County shall constitute a waiver of any of its rights or remedies or as approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**10. Governing Law.** This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply. The venue for any legal proceeding shall be in Forsyth County, North Carolina.

**11. Nonappropriation.** Notwithstanding anything to the contrary herein, in the event that public funds are unavailable and not appropriated for the performance of the County's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the County 30 days after written notice of the unavailability and non-appropriation of public funds. In the event of a change in the County's statutory authority, mandate, or mandated functions by state or federal legislative or regulatory actions, which adversely affects the County's authority or duty to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the County 30 days after written notice of such limitation or change in the County's legal authority or duty.

**12. Survival of Provisions.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of services and termination of this Agreement.

**13. Modification.** This Agreement may only be modified in writing and signed by both the School System and by the County Manager or other authorized County official.

**14. Conflict with Attachments.** In the event of any conflict between the provisions in this Agreement and any provisions in an attachment thereto, the provisions in this Agreement shall take precedence over any provision in an Attachment.

**15. Miscellaneous.** The School System shall comply with all applicable laws and regulations including but not limited to federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement and all federal immigration laws in its hiring and contracting practices. School System and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the School System to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. School System hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur), Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43, 147-86.58, and 147-86.81, nor will School System utilize for this Agreement any subcontractor on such lists. This agreement is intended for the benefit of the County and the School System and not for any other party. If any provision of this Agreement shall be unenforceable, the remainder of the Agreement shall be enforceable to the extent allowed by law.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the authorized officials of the County and the School System have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

(SEAL)

By: \_\_\_\_\_  
J. Dudley Watts, Jr, County Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ashleigh M. Sloop, Clerk to the Board

Date: \_\_\_\_\_

WINSTON-SALEM / FORSYTH COUNTY  
BOARD OF EDUCATION

(SEAL)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_